

Making a personal welfare application to the Court of Protection

About this guidance leaflet

This leaflet will provide you with help about making a personal welfare application to the Court of Protection (the 'court'). It also explains what the Court does, what decisions it can make, the powers it holds and how it appoints a deputy to make personal welfare decisions on behalf of someone who lacks capacity.

This guidance is designed for people who have no legal knowledge who may wish to make an application to the court in person, or who are making an application with the help of solicitors and wish to understand the process better.

The Mental Capacity Act

The Mental Capacity Act 2005 applies to England and Wales and provides a framework to empower and protect people who may lack capacity to make certain decisions for themselves.

The Mental Capacity Act is supported by a code of practice which provides guidance to all those who care for and/or make decisions on behalf of those who lack capacity. The Code includes case studies and explains in more detail the key features of the Act.

You can download the code from www.gov.uk - search 'Mental Capacity Act Code of Practice'.

The Court of Protection

The Court of Protection is the specialist court for all issues relating to people who lack capacity to make specific decisions. The court can make decisions and appoint deputies to make decisions about someone's property and financial affairs or their healthcare and personal welfare.

Under the Mental Capacity Act, the court has the power to:

- make decisions about the personal welfare or property and financial affairs of people who lack the capacity to make such decisions themselves;
- make declarations about a person's capacity to make a decision;

- make decisions in relation to serious medical treatment cases, which relate to providing, withdrawing or withholding treatment to a person who lacks capacity;
- authorise deprivation of liberty in relation to a person's care and residence arrangements;
- appoint a deputy to make ongoing decisions on behalf of a person who lacks capacity, in relation to either the person's personal welfare or property and financial affairs; and
- make decisions about a Lasting Power of Attorney or Enduring Power of Attorney, including whether the power is valid, objections to registration, the scope of the attorney's powers and the removal of attorney's powers.

When to apply to the Court of Protection

The Mental Capacity Act sets out five 'statutory principles' that support the legal requirements in the Act. The five principles are

1. A person must be assumed to have capacity unless it is established that he lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practical steps to help him do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests. Section 4 of the Act consists of a checklist to help the court or decision-maker determine whether something is in the person's best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Personal welfare matters generally – do you need to make an application to the court?

If the decision concerns the person's health and welfare, then applying the five principles above will usually be enough to make a decision about their care or treatment. Section 5 of the Act provides protection for carers, health care and social care staff to carry out certain tasks without fear of liability. This may include personal care or treatment of people who lack capacity to consent. The aim is to give legal backing for acts that need to be carried out in the best interests of the person who lacks capacity to consent to the doing of those acts.

In most matters concerning personal welfare, those principles will enable you to:

- take action or make a decision in the best interests of someone who lacks capacity; and
- find ways of settling disagreements about actions or decisions.

There are however important limitations on acts that can be carried out with protection from liability. Key areas include where there is inappropriate use of restraint or where a person who lacks capacity is deprived of their liberty.

It may be necessary to apply to court where:

- The decision concerns treatment to which the person cannot consent.
- The decision is difficult or complex.
- Someone disputes or disagrees with a course of action.
- The person needs ongoing help with decisions relating to personal health and welfare.

The Mental Capacity Act is supported by a Code of Practice which gives more guidance on when to make an application about someone's personal welfare:

- the proposed withholding or withdrawal of artificial nutrition and hydration (ANH) from a patient in a permanent vegetative state (PVS)
- cases where it is proposed that a person who lacks capacity to consent should donate an organ or bone marrow to another person

- the proposed non-therapeutic sterilisation of a person who lacks capacity to consent (for example, for contraceptive purposes)
- cases where there is a dispute about whether a particular treatment will be in a person's best interests.

Practice direction 9E gives further guidance on the types of serious medical decisions that must be made by the court. You can download practice directions from the website: www.gov.uk/court-of-protection.

The Code also gives some more general guidance on when the Court of Protection ought to be accessed to make a decision about someone's personal welfare, including:

- There is a major disagreement regarding a serious decision, which cannot be settled in any other way; this includes where a person should live (6.12 and 8.28).
- It is unclear whether proposed serious and/or invasive medical treatment is likely to be in the best interests of the person who lacks capacity to consent (8.24).
- There is genuine doubt or disagreement about the existence, validity or applicability of an advance decision to refuse treatment (8.28).
- A family carer or a solicitor asks for personal information about someone who lacks capacity to consent to that information being revealed (8.28).
- Stopping or limiting contact with a named individual because of a risk of harm or abuse to a person lacking capacity to decide on the contact (8.28)

When to apply for the appointment of a deputy for personal welfare

Important note: If you are considering making a personal welfare application, you must take particular care to establish whether the Court of Protection must make the decision, or whether you can make the decision without applying to the court. If the court decides that the application was not necessary, you may be liable to pay the costs and court fees.

If the person lacks mental capacity to make decisions about their personal welfare, an application to be a welfare deputy will not usually be necessary. Most

care and treatment decisions can be made by those involved in providing care, so long as they are acting in the person's best interests. The court will only appoint a personal welfare deputy in the most difficult cases. Examples might include where there is a history of disputes within the family, or where the person is at high risk of abuse or when there is a need for someone to make a series of linked welfare decisions over time.

For more guidance please refer to Chapter 8 of the Code of Practice.

Welfare decision

Permission to apply

In most personal welfare applications, the court's permission to apply is needed in order to make an application. The following will usually need permission:

- local authorities;
- NHS trusts;
- family members or friends;
- professionals;
- advocates, including Independent Mental
- Capacity Advocates (IMCAs).

The following do not need permission to apply:

- the person alleged to lack capacity;
- the person's litigation friend;
- attorneys appointed under a Lasting Power of Attorney to which the decision relates;
- deputies appointed by the court (including a deputy for property and affairs);
- relevant person's representatives (for applications under DoLS (the Deprivation of Liberty Safeguards));
- anyone applying for a court-authorised deprivation of liberty;
- the Public Guardian;
- the Official Solicitor;

- a person named in an existing order if the application relates to that order.

The guidance notes on the COP1 form and practice direction 8A explain all the circumstances when you need permission to apply.

If you need permission, your application cannot go ahead until the court grants you permission to apply.

Which application forms must I complete?

To make an application to the court, you will need to complete the following forms:

- COP1 - Application form
- COP1B - Supporting information for personal welfare applications
- COP3 - Assessment of capacity form

If you need permission to apply, you will need to complete section 6 of form COP1 and explain why you are making the application and how the application will benefit the person who lacks capacity.

If you are making an application as a person's litigation friend, the forms should be filled out in the person's name and signed by the litigation friend. The litigation friend will then take on the role of 'applicant'.

If a solicitor is helping you, then the solicitor can complete the forms and sign them on your behalf.

You can download the forms from the website: www.gov.uk/court-of-protection

Court fees

An application fee is payable when you make an application. Cheques should be made payable to HM Courts & Tribunals Service (HMCTS).

There are circumstances in which the court can waive all or part payment of the application fee depending on financial circumstances.

For further details, please see booklet COP44 - Court of Protection fees available from the website: www.gov.uk/court-of-protection

If you qualify for legal aid, then the fee must be paid even if you would otherwise qualify for fee remission or exemption. In such circumstances the fee will be included as part of the legal aid costs.

Emergency applications

If there is a clear risk that someone may suffer serious loss or harm, then you can apply to the court using the emergency procedure. This is only for when you need an immediate decision, where the court needs to consider the application within 24 hours or on the same day. Examples include:

- applications about urgent medical treatment;
- applications to prevent someone being removed from the place where they live;
- applications relating to deprivation of liberty where it is alleged that a person who lacks capacity is being unlawfully deprived of their liberty.

To make your emergency application, you should contact the court and ask to speak to the 'Urgent Business Officer'. They will discuss the case with you and arrange to receive your application and present it to a judge. Urgent Business Officers are available between 10:00 am – 4:00 pm.

Making an emergency application outside of office hours

If you need to make an emergency application outside of normal office hours (for example, at the weekend, or before 9.00 am or after 4.30 pm on a weekday) you should telephone the Royal Courts of Justice switchboard on 020 7947 6000.

More information on urgent applications can be found in Court practice direction 10B available from the website: www.gov.uk/court-of-protection.

Submitting your application

You should send two copies of your application form (COP1) and one copy of the other forms.

You should also keep a copy of every document you send for your own reference.

What happens after I submit my application?

Permission

If you need permission, the court will consider this first. In deciding whether to grant permission, it will consider:

- the reason the application is being made
- the benefits to the person of the application
- whether the benefits can be achieved any other way.

After considering whether to grant permission, the court will send you an order telling you either:

- permission has been granted
- permission has been refused, or
- a date has been fixed for a hearing of the application for permission.

Issuing the application

If permission is granted, or permission is not required and the application is complete, you will receive a copy of the application form stamped as issued by the court.

You will now need to tell others about your application using the following forms:

- COP5 Acknowledgement of service / notification of an application to the court
- COP14 Proceedings about you in the Court of Protection (not applicable if P – the incapacitated person - is the applicant or has been joined as a party); (and guidance notes for completing this);
- COP15 Notice (for others) that an application has been issued (and guidance notes for completing this)
- COP20A Certificate of service for form COP14
- COP20B Certificate of service for all other forms.

Who to tell about your application

Under the Court of Protection Rules you need to tell certain people about your application. You must do this within 14 days of the court issuing your application.

The person to whom the application relates (if not making the application themselves) should be given:

- a completed COP14 form
- a blank copy of the COP5 form.

Anyone named as a respondent should be given:

- a copy of the application and any supporting documents
- a blank copy of the COP5 form.

Relatives, IMCAs and anyone else named in section 5.2 of the application form as likely to have an interest, should be given:

- a completed and signed COP15 form. Some of the questions are the same as those on the application form, and here the answers should be copied from the original form
- a blank copy of the COP5 form.

How do I notify the person to whom the application relates?

You must notify the person to whom the application relates personally within 14 days of the court issuing the application form.

You or your representative must provide the information in a way that is appropriate to the person's circumstances, for example using simple language, visual aids or any other means. You must explain:

- who the applicant is;
- that the application raises the question of whether they lack capacity and what that means;
- what effect the outcome of the application would have;
- details of any person who would be appointed to make decisions on their behalf; and
- that they may seek advice and assistance in relation to the application.

You must also leave with the person to whom the application relates with the following forms:

- COP5 - Acknowledgement of service/notification; and
- COP14 - Proceedings about you in the Court of Protection.

How to serve or notify others

A document is served, or a person is notified by:

- delivering it to the person personally;
- delivering it to their home address; or
- sending it to that address, by first-class post or by an alternative method of service that provides for delivery on the next working day.

What do I do after service/notification?

After you have served or notified people about your application you must complete and return to the court:

- Form COP20A in relation to the person the application is about
- Form COP20B listing on the form other people you have served or notified.

You should send these within 7 days of the date of service/notification.

Where possible please send in form COP20A and COP20B together so that your application is not delayed.

If you cannot achieve the 14-day timeframe for service and notification, you must explain this to the court on the forms COP20A/COP20B.

What if I cannot serve or notify someone?

If for any reason you are unable to serve a document, for example you do not know a person's address and are unable to contact them within the 14 day time limit, you must explain the circumstances on the COP20A or COP20B form. This must be sent to the court within seven days of the latest date on which the documents should have been served.

What should a person do once they are served or notified?

A respondent who is served with a copy of the application form, COP5 must then decide whether they want to take part in the proceedings and put forward their views about the case. If so, they will need to complete and send form COP5 form to the court within 14 days of service.

When a respondent files a COP5 they will automatically become a party to the proceedings.

If someone is notified on form COP15 that an application has been issued, they too must decide whether they want to participate in the proceedings and put forward their views about the case. If so they will need to complete and send form COP5 form to the court within 14 days of notification.

When someone who is notified files a COP5, they will only become a party if the court joins them to the proceedings. In effect, the COP5 form is an application to be joined to the proceedings.

If the person filing a COP5 form opposes the application or wants the court to make a different decision, they should provide supporting evidence on form COP24 either at the same time as they file the COP5, or within 28 days of the date upon which they were served or notified.

What if a person has not been served or notified, but thinks they should be involved?

If a person has not been served or notified but wishes to participate in the case, they must make an application to the court to be joined as a party to the proceedings using form COP10 Application notice for applications to be joined as a party, which should include:

- their name and address
- their interest in the proceedings
- whether they agree or disagree with what is being proposed, or propose an alternative
- if they disagree, the reasons why.

The signed and dated application notice should be sent to the court along with:

- a witness statement using a COP24 form containing evidence of their interest in the proceedings and, if proposing an alternative to what is set out in the application, evidence that they will be relying on should the case progress to a hearing
- enough copies of the application notice for the court to serve on other parties to the proceedings.

The court will consider the application and if it agrees, make an order to join the person as a party to the case.

What will the court do with my application?

The court will not usually take any action until after the 14 days for responding to the court is over.

The next steps will depend on what has been asked for in the application, and whether those notified have objected, or suggested doing something different.

The court will then:

Give directions about the application and next steps to be taken.

The court may not be able to make a decision on the information that it has at this stage. It may give directions on what needs to be done in order that it can make a decision. Examples of directions are:

- provide additional evidence
- obtain the opinion of an outside agency, for example social services or a Court of Protection Visitor
- decide whether anyone else needs to be involved in the case

In these circumstances, all parties must follow the instructions given and provide any information that they are asked for. The court will then use this information either to make a decision or set a date for a hearing.

Or fix a date for the application to be heard by the court.

The court may decide straight away to set a date for a hearing. If this is the case, all parties will receive a letter from the court or a COP28 Notice of hearing form which will give details of when and where the hearing will take place.

What happens when the court makes a decision?

Once the court has made a decision, every other party will receive a copy of this. The court's decision is referred to as an 'order'.

What if I do not agree with the court's decision?

If the decision was made without a hearing, or without notice to any person affected by the order

You or any person affected by the decision may apply to the court for the decision to be reconsidered. You have 21 days to do this from the date the order is served and the application should be made using a COP9 form.

If the decision was made at a hearing

In this situation, you or any other party, or any person affected by the decision, may ask for permission to appeal against the decision. You have 21 days to do this from the date you receive the decision and the application should be made using a COP35 form.

Who pays for the costs of the application?

For proceedings in the Court of Protection that concern personal welfare decisions, there is usually no order made about costs. This means that each party will not be liable to pay anything except their own costs. If the court thinks that a party has acted unreasonably, the court may order one of the parties to pay another party's costs.

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Disclaimer

Court of Protection staff cannot give legal advice.
If you need legal advice, please contact a solicitor or your local Citizens Advice. Information in this guidance is believed to be correct at the time of publication; however, we do not accept any liability for any error it may contain.

If you need further help with your application, please check the website: www.gov.uk/court-of-protection